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OFFICE OF PETITIONS

In re Application of
Kenneth Y. Maxham
Application No. 09/648,019
Filed: August 25, 2000
Attorney Docket No. 23106/77099

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)¹, filed March 2, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The instant application became abandoned on October 10, 2004, for failure to submit within three months, a proper and timely response to the final Office action mailed on July 9, 2004. By Advisory Action dated February 23, 2005, petitioners were informed that the reply to the Final Office Action, filed October 11, 2004, did not place the application in condition for allowance. Accordingly, this application is abandoned. The instant petition and this decision precede the mailing of the Notice of Abandonment.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Petitioner has submitted a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

Additionally, petitioner has requested a three month extension of time, filed also with the petition to revive. Pursuant to 37 CFR 1.136 however, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$1020.00 extension of time fee submitted with the petition on March 2, 2005, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 50-0838.

This matter is being referred to Technology Center 2633 for processing of the RCE and submission.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions